

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

AMBER SHERRITT

24612 Harbor View, Unit B

Dana Point, CA 92629

Application for Licensure by Exam

Registered Nurse License No 764855
Respondent

Case No. 2010-98

OAH No. 2010-98

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on January 29, 2010.

IT IS SO ORDERED December 29, 2009.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

12 **AMBER SHERRITT**
246 Harbor View, Unit B
13 Dana Point, CA 92629
14 Application for Licensure by Exam

15 Respondent.

Case No. 2010-98

OAH No. 2010-98
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
23 by Hannah H. Rose, Deputy Attorney General.

24 2. Respondent Amber Sherritt (Respondent) is representing herself in this proceeding
25 and has chosen not to exercise her right to be represented by counsel.

26 3. On or about April 29, 2009, Respondent filed an application, dated April 24, 2009,
27 with the Board of Registered Nursing to obtain a Registered Nurse License.
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11. Respondent Amber Sheritt has provided documentation of her efforts at rehabilitation and community service in support of mitigation of this single offense.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated representatives.

3 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
4 or practice as a registered nurse outside of California shall not apply toward a reduction of this
5 probation time period. Respondent's probation is tolled, if and when she resides outside of
6 California. Respondent must provide written notice to the Board within 15 days of any change of
7 residency or practice outside the state, and within 30 days prior to re-establishing residency or
8 returning to practice in this state.

9 Respondent shall provide a list of all states and territories where she has ever been licensed
10 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
11 information regarding the status of each license and any changes in such license status during the
12 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
13 license during the term of probation.

14 5. **Submit Written Reports.** Respondent, during the period of probation,
15 shall submit or cause to be submitted such written reports/declarations and verification of actions
16 under penalty of perjury, as required by the Board. These reports/declarations shall contain
17 statements relative to Respondent's compliance with all the conditions of the Board's Probation
18 Program. Respondent shall immediately execute all release of information forms as may be
19 required by the Board or its representatives.

20 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
21 state and territory in which she has a registered nurse license.

22 6. **Function as a Registered Nurse.** Respondent, during the period of
23 probation, shall engage in the practice of registered nursing in California for a minimum of 24
24 hours per week for 6 consecutive months or as determined by the Board.

25 For purposes of compliance with the section, "engage in the practice of registered nursing"
26 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
27 non-direct patient care position that requires licensure as a registered nurse.

28 The Board may require that advanced practice nurses engage in advanced practice nursing

1 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

2 If Respondent has not complied with this condition during the probationary term, and
3 Respondent has presented sufficient documentation of her good faith efforts to comply with this
4 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
5 extension of Respondent's probation period up to one year without further hearing in order to
6 comply with this condition. During the one year extension, all original conditions of probation
7 shall apply.

8 **7. Employment Approval and Reporting Requirements.** Respondent shall
9 obtain prior approval from the Board before commencing or continuing any employment, paid or
10 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
11 performance evaluations and other employment related reports as a registered nurse upon request
12 of the Board.

13 Respondent shall provide a copy of this Decision to her employer and immediate
14 supervisors prior to commencement of any nursing or other health care related employment.

15 In addition to the above, Respondent shall notify the Board in writing within seventy-two
16 (72) hours after she obtains any nursing or other health care related employment. Respondent
17 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
18 separated, regardless of cause, from any nursing, or other health care related employment with a
19 full explanation of the circumstances surrounding the termination or separation.

20 **8. Supervision.** Respondent shall obtain prior approval from the Board
21 regarding Respondent's level of supervision and/or collaboration before commencing or
22 continuing any employment as a registered nurse, or education and training that includes patient
23 care.

24 Respondent shall practice only under the direct supervision of a registered nurse in good
25 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
26 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
27 approved.

28 Respondent's level of supervision and/or collaboration may include, but is not limited to the

1 following:

2 (a) Maximum - The individual providing supervision and/or collaboration is present in
3 the patient care area or in any other work setting at all times.

4 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
5 care unit or in any other work setting at least half the hours Respondent works.

6 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
7 person communication with Respondent at least twice during each shift worked.

8 (d) Home Health Care - If Respondent is approved to work in the home health care
9 setting, the individual providing supervision and/or collaboration shall have person-to-person
10 communication with Respondent as required by the Board each work day. Respondent shall
11 maintain telephone or other telecommunication contact with the individual providing supervision
12 and/or collaboration as required by the Board during each work day. The individual providing
13 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
14 patients' homes visited by Respondent with or without Respondent present.

15 9. **Employment Limitations.** Respondent shall not work for a nurse's
16 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
17 traveling nurse, or for an in-house nursing pool.

18 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
19 registered nursing supervision and other protections for home visits have been approved by the
20 Board. Respondent shall not work in any other registered nursing occupation where home visits
21 are required.

22 Respondent shall not work in any health care setting as a supervisor of registered nurses.
23 The Board may additionally restrict Respondent from supervising licensed vocational nurses
24 and/or unlicensed assistive personnel on a case-by-case basis.

25 Respondent shall not work as a faculty member in an approved school of nursing or as an
26 instructor in a Board approved continuing education program.

27 Respondent shall work only on a regularly assigned, identified and predetermined
28 worksite(s) and shall not work in a float capacity.

1 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
2 request documentation to determine whether there should be restrictions on the hours of work.

3 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
4 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
5 than six months prior to the end of her probationary term.

6 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
7 Respondent shall submit to the Board the original transcripts or certificates of completion for the
8 above required course(s). The Board shall return the original documents to Respondent after
9 photocopying them for its records.

10 11. **Violation of Probation.** If Respondent violates the conditions of her
11 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
12 the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

13 If during the period of probation, an accusation or petition to revoke probation has been
14 filed against Respondent's license or the Attorney General's Office has been requested to prepare
15 an accusation or petition to revoke probation against Respondent's license, the probationary
16 period shall automatically be extended and shall not expire until the accusation or petition has
17 been acted upon by the Board.

18 12. **License Surrender.** During Respondent's term of probation, if she ceases
19 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
20 probation, Respondent may surrender her license to the Board. The Board reserves the right to
21 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
22 take any other action deemed appropriate and reasonable under the circumstances, without further
23 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
24 longer be subject to the conditions of probation.

25 Surrender of Respondent's license shall be considered a disciplinary action and shall
26 become a part of Respondent's license history with the Board. A registered nurse whose license
27 has been surrendered may petition the Board for reinstatement no sooner than the following
28 minimum periods from the effective date of the disciplinary decision:

1 (1) Two years for reinstatement of a license that was surrendered for any reason other
2 than a mental or physical illness; or

3 (2) One year for a license surrendered for a mental or physical illness.

4 13. **Physical Examination.** Within 45 days of the effective date of this
5 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
6 physician assistant, who is approved by the Board before the assessment is performed, submit an
7 assessment of the Respondent's physical condition and capability to perform the duties of a
8 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
9 medically determined, a recommended treatment program will be instituted and followed by the
10 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
11 to the Board on forms provided by the Board.

12 If Respondent is determined to be unable to practice safely as a registered nurse, the
13 licensed physician, nurse practitioner, or physician assistant making this determination shall
14 immediately notify the Board and Respondent by telephone, and the Board shall request that the
15 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
16 immediately cease practice and shall not resume practice until notified by the Board. During this
17 period of suspension, Respondent shall not engage in any practice for which a license issued by
18 the Board is required until the Board has notified Respondent that a medical determination
19 permits Respondent to resume practice. This period of suspension will not apply to the reduction
20 of this probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within the 45-day
22 requirement, Respondent shall immediately cease practice and shall not resume practice until
23 notified by the Board. This period of suspension will not apply to the reduction of this
24 probationary time period. The Board may waive or postpone this suspension only if significant,
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
26 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
27 Only one such waiver or extension may be permitted.

28 14. **Participate in Treatment/Rehabilitation Program for Chemical**

1 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
2 period or shall have successfully completed prior to commencement of probation a Board-
3 approved treatment/rehabilitation program of at least six months duration. As required, reports
4 shall be submitted by the program on forms provided by the Board. If Respondent has not
5 completed a Board-approved treatment/rehabilitation program prior to commencement of
6 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
7 a program. If a program is not successfully completed within the first nine months of probation,
8 the Board shall consider Respondent in violation of probation.

9 Based on Board recommendation, each week Respondent shall be required to attend at least
10 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
11 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
12 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
13 added. Respondent shall submit dated and signed documentation confirming such attendance to
14 the Board during the entire period of probation. Respondent shall continue with the recovery plan
15 recommended by the treatment/rehabilitation program or a licensed mental health examiner
16 and/or other ongoing recovery groups.

17 15. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
18 shall completely abstain from the possession, injection or consumption by any route of all
19 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
20 the same are ordered by a health care professional legally authorized to do so as part of
21 documented medical treatment. Respondent shall have sent to the Board, in writing and within
22 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
23 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
24 medication will no longer be required, and the effect on the recovery plan, if appropriate.

25 Respondent shall identify for the Board a single physician, nurse practitioner or physician
26 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
27 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
28 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report

1 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
2 considered addictive have been prescribed, the report shall identify a program for the time limited
3 use of any such substances.

4 The Board may require the single coordinating physician, nurse practitioner, or physician
5 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
6 medicine.

7 **16. Submit to Tests and Samples.** Respondent, at her expense, shall
8 participate in a random, biological fluid testing or a drug screening program which the Board
9 approves. The length of time and frequency will be subject to approval by the Board.
10 Respondent is responsible for keeping the Board informed of Respondent's current telephone
11 number at all times. Respondent shall also ensure that messages may be left at the telephone
12 number when she is not available and ensure that reports are submitted directly by the testing
13 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
14 to the Board by the program and Respondent shall be considered in violation of probation.

15 In addition, Respondent, at any time during the period of probation, shall fully cooperate
16 with the Board or any of its representatives, and shall, when requested, submit to such tests and
17 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
18 hypnotics, dangerous drugs, or other controlled substances.

19 If Respondent has a positive drug screen for any substance not legally authorized and not
20 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
21 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
22 practice pending the final decision on the petition to revoke probation or the accusation. This
23 period of suspension will not apply to the reduction of this probationary time period.

24 If Respondent fails to participate in a random, biological fluid testing or drug screening
25 program within the specified time frame, Respondent shall immediately cease practice and shall
26 not resume practice until notified by the Board. After taking into account documented evidence
27 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
28 suspend Respondent from practice pending the final decision on the petition to revoke probation

1 or the accusation. This period of suspension will not apply to the reduction of this probationary
2 time period.

3 **17. Mental Health Examination.** Respondent shall, within 45 days of the
4 effective date of this Decision, have a mental health examination including psychological testing
5 as appropriate to determine her capability to perform the duties of a registered nurse. The
6 examination will be performed by a psychiatrist, psychologist or other licensed mental health
7 practitioner approved by the Board. The examining mental health practitioner will submit a
8 written report of that assessment and recommendations to the Board. All costs are the
9 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
10 result of the mental health examination will be instituted and followed by Respondent.

11 If Respondent is determined to be unable to practice safely as a registered nurse, the
12 licensed mental health care practitioner making this determination shall immediately notify the
13 Board and Respondent by telephone, and the Board shall request that the Attorney General's
14 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
15 practice and may not resume practice until notified by the Board. During this period of
16 suspension, Respondent shall not engage in any practice for which a license issued by the Board
17 is required, until the Board has notified Respondent that a mental health determination permits
18 Respondent to resume practice. This period of suspension will not apply to the reduction of this
19 probationary time period.

20 If Respondent fails to have the above assessment submitted to the Board within the 45-day
21 requirement, Respondent shall immediately cease practice and shall not resume practice until
22 notified by the Board. This period of suspension will not apply to the reduction of this
23 probationary time period. The Board may waive or postpone this suspension only if significant,
24 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
25 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
26 Only one such waiver or extension may be permitted.

27 **18. Therapy or Counseling Program.** Respondent, at her expense, shall
28 participate in an on-going counseling program until such time as the Board releases her from this

1 requirement and only upon the recommendation of the counselor. Written progress reports from
2 the counselor will be required at various intervals.

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5 ACCEPTANCE

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
7 stipulation and the effect it will have on my Registered Nurse License. I enter into this
8 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
9 to be bound by the Decision and Order of the Board of Registered Nursing.

10
11 DATED: 10/4/09


12 AMBER SHERRITT
13 Respondent

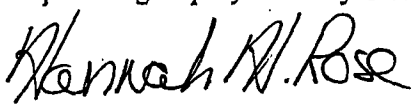
14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
17 Affairs.

18 Dated: October 5, 2009

19 Respectfully Submitted,

20 EDMUND G. BROWN JR.
21 Attorney General of California
22 FRANK H. PACOE
23 Supervising Deputy Attorney General


24 HANNAH H. ROSE
25 Deputy Attorney General
26 Attorneys for Complainant

27 SF2009404148
28 Stipulation.rtf

Exhibit A

Statement of Issues No. 2010-98

ORIGINAL

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2 FRANK H. PACOE
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8 LYDIA ZANE
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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Statement of Issues
Against:

15 **AMBER ALYSH SHERRITT**
16 **24612 Harbor View Unit B**
17 **Dana Point, California 92629**
18 **Registered Nurse License**

Applicant.

Case No. **2010-98**

STATEMENT OF ISSUES

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
23 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about April 29, 2009, the Board of Registered Nursing, Department of
26 Consumer Affairs received an application for a Registered Nurse's License from Amber Alysh
27 Sheritt (Applicant). On or about April 24, 2009, Amber Alysh Sheritt certified under penalty of
28

1 perjury to the truthfulness of all statements, answers, and representations in her application. The
2 Board denied the application on May 18, 2009.

3 JURISDICTION

4 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 4. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part,
9 that the Board of Registered Nursing (Board) may deny a license when it finds that the applicant
10 has committed any act constituting grounds for denial of licensure under section 480 of that Code.

11 5. Section 480 of the Code states in relevant part that:

12 (a) A board may deny a license regulated by this code on the grounds that the applicant has
13 one of the following:

14 (1) Been convicted of a crime. A conviction within the meaning of this section means a
15 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a
16 board is permitted to take following the establishment of a conviction may be taken when the
17 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
18 an order granting probation is made suspending the imposition of sentence, irrespective of a
19 subsequent order under the provisions of Section 1203.4 of the Penal Code.

20 ...

21 (3) Done any act that if done by a licentiate of the business or profession in question,
22 would be grounds for suspension or revocation of license.

23 The board may deny a license pursuant to this subdivision only if the crime or act is
24 substantially related to the qualifications, functions or duties of the business or profession for
25 which application is made.

26 ...
27
28

1 6. Section 2761 of the Code states in pertinent part that the board may take disciplinary
2 action against a certified or licensed nurse or deny an application for a certificate or license for
3 any of the following:

4 ...

5 (f) Conviction of a felony or of any offense substantially related to the qualifications,
6 functions, and duties of a registered nurse, in which event the record of the conviction shall be
7 conclusive evidence thereof.

8 7. Section 2762 of the Code states:

9 In addition to other acts constituting unprofessional conduct within the meaning of this
10 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
11 chapter to do any of the following:

12 ...

13 (b) Use any controlled substance as defined in Division 10 (commencing with Section
14 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
15 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
16 himself or herself, any other person, or the public or to the extent that such use impairs his or her
17 ability to conduct with safety to the public the practice authorized by his or her license.

18 (c) Be convicted of a criminal offense involving the prescription, consumption, or
19 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
20 or the possession of, or falsification of a record pertaining to, the substances described in
21 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
22 thereof.

23 REGULATION PROVISIONS

24 8. Section 1444 of the California Code of Regulations, Title 16, states in pertinent part
25 that a conviction or act shall be considered to be substantially related to the qualifications,
26 functions or duties of a registered nurse if to a substantial degree it evidences the present or
27 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
28 safety, or welfare.

2. Taking such other and further action as deemed necessary and proper.

DATED: 8/28/09

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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